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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MICROSOFT CORPORATION and
ACTIVISION BLIZZARD, INC.,

Defendants.

Case No. 3:23-cv-02880-JSC

**ADMINISTRATIVE MOTION TO SEAL
PORTIONS OF DECLARATION OF AMY
HOOD**

Dept.: Courtroom 8—19th Floor
Judge: Honorable Jacqueline S. Corley

Pursuant to Civil Local Rules 7-11 and 79-5(c), Defendant Microsoft Corporation (“Microsoft”) respectfully moves this Court for an order sealing portions of the Declaration of Amy Hood (hereafter, “Hood Declaration”).

Below, Microsoft has identified highly confidential material found in the deposition excerpts, along with the specific bases for sealing required under Local Rule 79-5. The proposed sealing reflects Microsoft’s good-faith efforts to narrowly seek sealing of only that information which is competitively sensitive, the public disclosure of which would cause injury to Microsoft that cannot be avoided through any more restrictive alternative means:

Document	Portions to Be Filed Under Seal	Designating Party	Basis for Sealing Request ¹
Hood Declaration	Page 3, portion of footnote 3	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, and revenue figures and projections, which could be used to injure Microsoft if made publicly available.
Hood Declaration	Page 4, portion of paragraph 9	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, internal revenue figures and projections, which could be used to injure Microsoft if made publicly available.
Hood Declaration	Page 4, portion of footnote 4	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, assessment of the competitive landscape, and internal discussions of business strategy, which could be used to injure Microsoft if made publicly available.

¹ Legitimate private interests warrant sealing of the Microsoft information in this chart, and the unsealing of the information would result in injury to Microsoft that cannot be avoided through any less restrictive alternatives.

Document	Portions to Be Filed Under Seal	Designating Party	Basis for Sealing Request ¹
Hood Declaration	Page 4, portion of footnote 5	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, and internal discussions of business strategy, which could be used to injure Microsoft if made publicly available.
Hood Declaration	Page 5, portion of paragraph 11	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, internal revenue figures and projections, which could be used to injure Microsoft if made publicly available.
Hood Declaration	Page 6, portion of paragraph 14	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, and revenue figures and projections, which could be used to injure Microsoft if made publicly available.
Hood Declaration	Page 7, portion of paragraph 17	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, internal revenue figures and projections, which could be used to injure Microsoft if made publicly available.
Hood Declaration	Page 8, portion of footnote 17	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, and revenue figures and projections, which could be used to injure Microsoft if made publicly available.

ARGUMENT

I. Sealing Portions of the Hood Declaration Is Warranted Under Ninth Circuit Precedent as It Contains Microsoft's Confidential Business Information

1 In the Ninth Circuit, “[p]arties seeking to seal judicial records relating to motions that are ‘more
2 than tangentially related to the underlying cause of action,’ bear the burden of overcoming the
3 presumption with ‘compelling reasons supported by specific factual findings that outweigh the general
4 history of access and the public policies favoring disclosure.’” *Lenovo (United States) Inc. v. IPCOM
5 GmbH & Co., KG*, 2022 WL 2313948, at *1 (N.D. Cal. Jun. 28, 2022); *see also Kamakana v. City &
6 County of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (“[T]he court must ‘conscientiously [] balance
7 the competing interests’ of the public and the party who seeks to keep certain judicial records secret.”).
8 Courts in this Circuit regularly find that sealing is warranted where the records or information that are
9 sought to be sealed could be used “as sources of business information that might harm a litigant’s
10 competitive standing.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978); *see also In re Elec.
11 Arts, Inc.*, 298 F. App’x 568, 569 (9th Cir. 2008) (same); *Velasco v. Chrysler Grp. LLC*, 2017 WL
12 445241, at *2 (C.D. Cal. Jan. 30, 2017) (stating that “district courts in this Circuit have sealed records
13 containing ‘information about proprietary business operations, a company’s business mode or
14 agreements with clients,’ [and] ‘internal policies and strategies’”) (internal citations omitted).

15 “The Ninth Circuit has explained that ‘in general, compelling reasons sufficient to outweigh the
16 public’s interest in disclosure and justify sealing court records exist when such court files might have
17 become a vehicle for improper purposes, such as the use of records to . . . release trade secrets.’” *Velasco*,
18 2017 WL 445241, at *2 (quoting *Elec. Arts*, 298 F. App’x at 569); *see also Elec. Arts*, 298 F. App’x at
19 569 (“A ‘trade secret may consist of any formula, pattern, device or compilation of information which
20 is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors
21 who do not know or use it.’”) (citation omitted). A court has “broad latitude” to grant protective orders
22 to prevent disclosure of “many types of information, including, but not limited to, trade secrets or other
23 confidential research, development, or commercial information.” *Phillips ex rel. Estates of Byrd v. Gen.
24 Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002).

25 In determining whether a document should be filed under seal, courts consider, among other
26 things, the measures taken to guard the information’s secrecy and the value of the information to the
27 business or its competitors. *E.g., Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206,
28 1212 (9th Cir. 2002). Here, Microsoft seeks to seal narrowly tailored excerpts of the Hood Declaration

1 that reference and reflect, among other things, confidential, proprietary information relating to
2 Microsoft's internal decision-making processes, investment decisions, strategic evaluation of forward-
3 looking opportunities, market share analyses, assessments of the competitive landscape, business
4 partnerships, terms of existing confidential agreements, revenue figures and projections, and internal
5 presentations discussing business strategy. The disclosure of this information could be used to injure
6 Microsoft if made publicly available.

7 **II. Sealing Portions of the Hood Declaration Is Necessary to Protect Microsoft's Confidential**
8 **and Proprietary Business Information**

9 Microsoft seeks to maintain under seal portions of the Hood Declaration, as they contain
10 Microsoft's non-public and highly sensitive information from documents obtained during the course of
11 the FTC's investigation and during litigation discovery. Examples of such confidential information
12 include, but are not limited to, Microsoft's internal decision-making processes, investment decisions,
13 strategic evaluation of forward-looking opportunities, market share analyses, assessments of the
14 competitive landscape, business partnerships, terms of existing confidential agreements, revenue figures
15 and projections, and internal presentations discussing business strategy. Disclosure of this information
16 would provide Microsoft's competitors with private data about Microsoft's performance and business
17 strategy, which could harm Microsoft's competitive standing. *See Cont'l Auto. Sys. v. Avanci, LLC*,
18 2019 WL 6612012, at *4 (N.D. Cal. Dec. 5, 2019). Thus, the unsealing of this highly confidential and
19 sensitive information would cause injury to Microsoft that cannot be avoided through less restrictive
20 alternatives.

21 Finally, Microsoft provided the FTC with the confidential business information cited in the Hood
22 Declaration pursuant to the statutory and regulatory guarantees of confidentiality contained in the Hart-
23 Scott-Rodino Act or the FTC Act. *See* 15 U.S.C. §§ 18a(h), 46(f), 57b-2(b), 57b-2(c); 6 C.F.R. § 4.10(d)-
24 (g). In similar cases, the FTC has acknowledged the need to maintain the confidentiality of a party's
25 confidential business information that has been provided to the FTC via a regulatory request. *See, e.g.,*
26 *FTC v. Lockheed Martin Corp.*, 2022 WL 1446650, at *2 (D.D.C. Jan. 25, 2022) ("According to the
27 FTC, sealing the complaint is appropriate . . . because the filing includes confidential information
28 submitted . . . pursuant to 'statutory and regulatory guarantees of confidentiality.' . . . The requested

sealing covers only confidential information and is, according to the FTC, required by regulation.”).

III. Conclusion

As stated above, compelling reasons justify Microsoft’s request for sealing the confidential business information contained in the Hood Declaration. Microsoft respectfully requests that this Court grant its Motion to Seal the confidential portions of the Hood Declaration as identified herein. In accordance with Civil Local Rule 7-11, Microsoft has also filed a Proposed Order herewith.

Dated: June 28, 2023

Respectfully submitted,

By: /s/ Caroline Van Ness

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